

Gaither, the elder, and the person by whom, if by any one, the imputed fraud was perpetrated, died in the year 1849. No reason is stated or appears why the bill was not filed between the years 1836 and 1849, when the elder Gaither was alive, and competent to defend his rights and his reputation. Instead of instituting his suit during that period, the complainant postponed it until the year 1850, being fourteen years after the death of the testator, and then relies upon loose and perhaps inaccurately-remembered declarations of Gaither, for the purpose of defeating the title of the parties claiming under him, under his deed of October, 1840. His declarations, made since that deed, are of course inadmissible to impair the rights of the parties claiming under it. This principle has been frequently adjudicated, and is not in this case understood to be denied, and excludes the testimony of several of the witnesses upon whom the plaintiff relies.

The answers, all of them, deny the statements of the bill, and some of the respondents speak in opposition to their interests, and, on that account, in so far as they speak of matters within their own knowledge, are entitled to more consideration than is usually attached to answers. Many of the averments of the bill refer to family transactions, which it is natural to suppose would have formed subjects of conversation in the family circle, and yet the defendants, all of them, deny or express their total ignorance or unbelief of them.

Upon attentively reading and considering the testimony adduced by the plaintiff, and putting out of view altogether the proof on the other side, I can see no ground upon which I could decree the relief prayed by this bill in opposition to these answers. The principle, it will be remembered, is, that the heir or devisee must have induced the testator or intestate to omit the particular provision by assurances that his wishes should be as fully executed as if the omitted provision was made, and even though it be conceded that such an engagement may be entered into not only by words but by silent assent, as in a case somewhat analogous was held by *Lord Loughborough*, in 4 *Ves.*, 10, and as was considered by *Lord*